

EXHIBIT 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EMIGRANT BANK and PACIFIC
MERCANTILE BANK,

Plaintiffs,

vs.

SUNTRUST BANK; TRUIST BANK;
and DOES 1 through 10,
inclusive,

Defendants.

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) Case No.

) 1:20-cv-02391-PGG-OTW

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DEPOSITION OF REX BOWRING
Tuesday, December 5, 2023

Reported by:

KATHLEEN E. BARNEY

CSR No. 5698

1 UNITED STATES DISTRICT COURT
 2 SOUTHERN DISTRICT OF NEW YORK
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 7 EMIGRANT BANK and PACIFIC)
 8 MERCANTILE BANK,)
 9)
 10)
 11 Plaintiffs,)
 12)
 13 vs.) Case No.
 14) 1:20-cv-02391-PGG-OTW
 15)
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 18)
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Deposition of REX BOWRING, taken on
 behalf of Plaintiffs, beginning at 9:03 a.m. and
 ending at 7:01 p.m. on Tuesday, December 5, 2023,
 before KATHLEEN E. BARNEY, Certified Shorthand
 Reporter No. 5698.

1 APPEARANCES:

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3 For Plaintiffs:

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5 QUINN EMANUEL URQUHART & SULLIVAN, LLP

6 BY: GARY GANS

7 KAYLA ROONEY

8 Attorneys at Law

9 865 South Figueroa Street

10 10th Floor

11 Los Angeles, California 90017

12 garygans@quinnemanuel.com
13
14

15 For Defendants:

16
17 KING & SPALDING

18 BY: DAVID TETRICK (Via Zoom)

19 Attorney at Law

20 1180 Peachtree Street, NE

21 Suite 1600

22 Atlanta, Georgia 30309

23 dtetrick@kslaw.com
24
25

1 APPEARANCES (continued) :

2
3 Videographer :

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5 STEVEN TOGAMI
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1 operate the business?

2 A No, because we had significant payables in
3 arrears that was significant past due.

4 Q Do you recall that Mr. Perez directed you to
5 wire the 2 million dollars to Virgo on Wednesday
6 that week?

7 A I don't recall from my memory at this point.

8 MR. GANS: All right. I'd like to have
9 marked as Exhibit 136 a one-page email from
10 Mr. Perez to Mr. Bowring, Bates stamped ALC00629913.

11 (Exhibit 136 was marked for identification
12 and is attached hereto.)

13 BY MR. GANS:

14 Q Did you receive a copy of this email in
15 December of 2015?

16 A Yes.

17 Q And it says:

18 "Rex - as a heads-up, I've been
19 alerted by my ops team that there is
20 around \$75,000 of expenses that Virgo
21 has related to Alchemy...travel, FTI
22 retainer, et cetera, that we need to
23 get reimbursed. Ben will get you the
24 final details. Thanks."

25 Do you see that?

1 A Yes.

2 Q And was it your understanding that Mr. Perez
3 was asking that about \$75,000 of Virgo's expenses be
4 reimbursed at that time?

5 A Yes.

6 Q Did you think that that would leave Alchemy
7 with insufficient cash to pay its vendors?

8 A If we paid it, yes.

9 Q Did Mr. Perez authorize that payment?

10 A I'd have to look at other emails. At this
11 point when I read this email, it's just a head-up.
12 I interpreted this as just they needed to get
13 reimbursed and put it into the cash flow schedule
14 and -- the 13-week cash flow schedule. And then
15 when I get direction, because it was going from
16 Virgo expenses, then I would have -- only when I got
17 direction from Mark Perez or Bill Lee, then I would
18 have released that wire.

19 But in this particular case, I believe Bill
20 Lee was gone, so I was taking direction
21 realistically from Mark Perez unless Scott Guthrie
22 interjected.

23 MR. GANS: I'd like to have marked as
24 Exhibit 137 a one-page email chain Bates stamped
25 ALC00558837.